

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION )  
OF CHESAPEAKE UTILITIES ) PSC DOCKET NO. 15-1734  
CORPORATION FOR A GENERAL )  
INCREASE IN ITS NATURAL GAS RATES )  
AND FOR APPROVAL OF CERTAIN )  
OTHER CHANGES TO ITS NATURAL GAS )  
TARIFF (Filed DECEMBER 21, 2015) )

**REPLY IN SUPPORT OF PETITION FOR LEAVE TO INTERVENE OF  
THE DELAWARE ASSOCIATION OF ALTERNATIVE ENERGY PROVIDERS, INC.**

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Attorneys for Intervenor Delaware Association of  
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March 9, 2016

Petitioner Delaware Association of Alternative Energy Providers, Inc.<sup>1</sup> (“DAAEP”) hereby submits the following reply to Chesapeake Utilities Corporation's Opposition to the Petition to Intervene filed by DAAEP (the “Opposition”). In further support of its Petition, DAAEP states as follows:

1. Through its Opposition, Chesapeake seeks to reverse the history of the Delaware Public Service Commission (the “Commission”) permitting competitors to intervene in all types of utility cases, and specifically permitting DAAEP to intervene in Chesapeake cases in which the utility attempts to modify its tariff and/or Commission-approved procedures to allow for greater expansion. (*See* DE PSC Order No. 8210 (attached as Exhibit 1)). In doing so, Chesapeake points to no new substantive Delaware public policy reasoning, but instead erroneously asserts as it has in previous dockets that DAAEP fails to satisfy the Commission’s Rule 2.9.1.3 intervention requirements. Chesapeake is incorrect and, for similar reasons that DAAEP was permitted to intervene in Dockets Nos. 97-72T, 05-322 and 07-186, DAAEP should be permitted to intervene in this proceeding for the reasons set forth in its Petition and herein.

2. First, Chesapeake concludes that the issues raised by DAAEP “are more than adequately represented by others in this proceeding.” As in previous proceedings, DAAEP does not doubt that the interests of Chesapeake's customers, and Delaware residents in general, will be represented by the Commission Staff and the Delaware Public Advocate in this proceeding. There can also be no doubt, however, that the interests of the members of DAAEP are

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<sup>1</sup> In its Opposition, Chesapeake appears to question the membership of DAAEP while at the same time characterizing the interests of the members. Notwithstanding these conflicting positions, to the extent necessary DAAEP provides that its members include Pep-up, Inc., Peninsula Oil & Propane Inc. (a/k/a Peninsula Oil Co.), Poore’s Propane Gas Service, Inc., Schagrin Gas Co., Tri-Gas & Oil Co., Inc. and Baker Petroleum.

inadequately represented in this proceeding without its intervention, and Chesapeake makes no credible argument to the contrary.

3. DAAEP seeks to intervene as it has a direct interest in the outcome of this proceeding as such outcome will have a direct impact upon DAAEP's members, and their employees, who may be significantly harmed by the "new service offerings" proposed by Chesapeake in its Application. As provided in the Petition, DAAEP's interest in Chesapeake's expansion-related proceedings before the Commission have been firmly established over the past 15 years.

4. As acknowledged in the Opposition, Chesapeake has tried previously to exclude DAAEP from participating in proceedings involving its expansion policies, rules and regulations only to be denied by decision of the Hearing Examiner and the Commission directly. As provided in the Petition, in PSC Docket No. 07-186, the Commission determined that DAAEP's intervention was appropriate and its interest firmly established. (*See* Commission Order No. 7325).

5. Indeed, DAAEP was a signatory to the 2008 Settlement Agreement for PSC Docket No. 07-186, and this proceeding will include a review of Chesapeake's audit of its application of the Internal Rate of Return Model and other extension policies as required by such agreement. Chesapeake does not disagree that the audit will be reviewed in this proceeding in its Opposition, but instead argues that the 2008 Settlement Agreement did not contain a clause that DAAEP could participate in the audit review and that the agreement does not have any precedential effect in this proceeding. Chesapeake's assertions are without merit and fail to rebut the simple point that as a signatory to the 2008 Settlement Agreement DAAEP has an interest in this proceeding and the review of the audit required by the agreement. Further, it is unknown

what discussions may occur during the course of this proceeding with respect to Chesapeake's IRRM or expansion policies. It is hard to understand why, if DAAEP was a critical party to the 2008 Settlement Agreement, when a review of an audit caused by such agreement is to be part of this proceeding, DAAEP should not be a party. Further, if Chesapeake is permitted to modify the terms of previous agreements, its IRRM or other expansion policies through this proceeding without DAAEP participation, DAAEP may have no recourse. For these reasons, it does not make sense to preclude DAAEP from the process.

6. Second, Chesapeake concludes that DAAEP has not provided any reason why its participation in this proceeding would further the public interest. In doing so, Chesapeake attacks DAAEP as trying to “leverage” this proceeding for its own interests and characterizes DAAEP as fearing that “it will face increased competition from Chesapeake.” Chesapeake goes so far as to state that DAAEP’s “concerns are actually *contrary* to the public interest”, and that DAAEP will attempt to “stifle competition” through its intervention in this proceeding.

7. These arguments by Chesapeake are meritless, unfounded assertions and its own interpretation of the “public interest”. First, Chesapeake has its own unregulated propane subsidiary, Sharp Propane, which competes with all the members of DAAEP and thus has the ability to put its affiliate on equal footing with the members of DAAEP. Second, Chesapeake should not be able to achieve through this proceeding an unfair competitive advantage that is contrary to settled law and policies of the Commission, including “service offerings” that are (i) unjustified or not supported by appropriate and normal cost and revenue data or (ii) services that are subsidized by other rate payers. Advancing the public policy goals of the Commission is a valid basis for intervention. DAAEP, having a direct and very real interest in insuring that

Chesapeake's expansion policies are not contrary to established law and/or rules and regulations of the Commission, advances such goals by intervening and is in a unique position to do so.

8. Furthermore, DAAEP's intervention in this proceeding is in the public interest. As the Commission has previously stated in granting DAAEP's Petition to Intervene in a DP&L gas docket, intervention is appropriate because DAAEP "represents interests [that] are not otherwise specifically represented in this matter and without whose participation the record may not be fully developed" and "granting of the petition would broaden the participation of interested persons in this docket and provide additional information and insights from which the Commission and the public policy of the State would benefit." (*See* PSC Docket No. 95-44, Order No. 4014, attached as Exhibit 2). Indeed, DAAEP, whose members are in the gas market daily, can provide a unique, industry perspective to the Commission as to Chesapeake's Application. Despite the fact that members of DAAEP compete with Chesapeake, DAAEP has an interest in ensuring Chesapeake does not seek an unfair competitive advantage and its participation in this proceeding will further the public policy goals of the Commission. Thus, DAAEP's participation is in the public interest.

9. Chesapeake's argument against DAAEP's intervention being in the public interest rests, in part, on Delaware Senate Joint Resolution No. 7, signed July 31, 2104, regarding the extension of a natural gas pipeline to Kent and Sussex Counties. Chesapeake goes so far as to suggest that that there has been a shift in public interest since its 2007 rate case and "commands that the Commission view the Petition through a changed prism here." Chesapeake's public assertions regarding 2014 SJR No. 7 are incorrect, and indeed, as evidenced by the 2005 application submitted by Chesapeake for PSC Docket 05-322 (attached as Exhibit 3), enhancing natural gas availability in southern Delaware has been studied and of interest to the State since

2003 or before. Notwithstanding this interest, DAAEP was an intervening party in PSC Docket 05-322, and no shift in public interest has occurred.

10. Accordingly, it would be consistent with the Commission's liberal granting of intervention and the past practice between the parties to permit DAAEP to intervene in this proceeding.

11. Chesapeake raises other legal arguments in the Opposition that DAAEP will briefly address.

12. Chesapeake asserts that the statutory scope of the Commission's review in this base rate case proceeding recommends denial of DAAEP's Petition. First, the Delaware statute cited by Chesapeake, 26 *Del. C.* § 303(a), does not speak to rates alone but also includes "any regulation, practice or measurement which is unjust, unreasonable, unduly preferential or unjustly discriminatory or otherwise in violation of law". Thus, DAAEP's intervention with respect to the new service offerings is within the Commission's statutory scope. Moreover, Chesapeake choose to seek the Commission approval of its new offerings as part of this base rate proceeding. Chesapeake should not be allowed to use its decision to preclude DAAEP from intervening where its interests are of concern.

13. Chesapeake provides what it describes as a "useful and analogous" Maryland Public Service Commission order in which intervention was denied based upon the competition interests. This order should be given no weight in this proceeding. First, the Maryland proceeding was not the same as this proceeding as it was for a CPCN, not a rate case with expansion service offerings being proposed. Second, contrary to this Commission's proceedings, the Maryland order recognizes different levels of intervention rights in Maryland proceedings (party status vs. interested person status), which are not found in this Commission's rules nor did

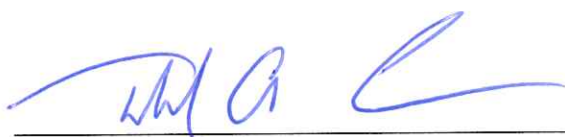
Chesapeake assert should be adopted. Lastly, the Maryland order is contrary to this Commission's policy of liberally granting intervention.

14. Chesapeake cites *Oceanport Industries, Inc. v. Wilmington Stevedores, Inc.* 636 A.2d. 892, 902 (Del. Supr. 1994) for the proposition that DAAEP cannot assert "organizational standing" to represent its members interests. This undeveloped legal argument by Chesapeake is meritless including, *inter alia*, as "[t]his is a special standing requirement imposed upon organizations who are suing on behalf of their members" and thus is a test applied in an appeal, not at this stage of a proceeding. *Id.* at 902.

15. In summary, Chesapeake has not demonstrated any reason why DAAEP should be treated differently in this proceeding than it has been treated in past proceedings. Accordingly, DAAEP respectfully requests that its petition to intervene be granted without restriction.

**WHEREFORE**, the Delaware Association of Alternative Energy Providers, Inc. respectfully requests that it be granted leave to intervene in this proceeding as a party for all purposes.

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Attorneys for Intervenor Delaware Association of  
Alternative Energy Providers, Inc.

Dated: March 9, 2016

STATE OF DELAWARE

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SS.

COUNTY OF

:

Andrew Lambert, being duly sworn, hereby verifies that:

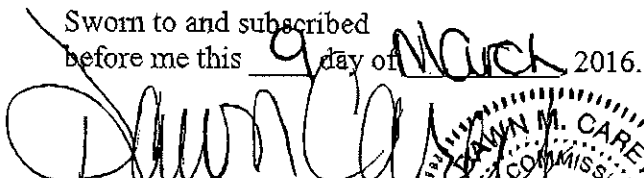
1. I am the President of the Delaware Association of Alternative Energy Providers, Inc. and am authorized to make this affidavit on its behalf.

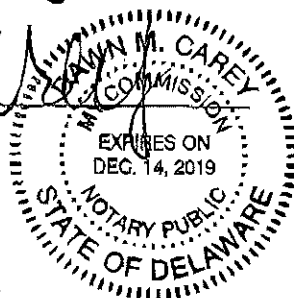
2. Insofar as the foregoing Reply in Support of Petition for Leave to Intervene states facts, said facts are true and correct to the best of my knowledge, information and belief. To the extent any facts alleged are not in my personal knowledge, I believe them to be true and correct.

Dated this 9 day of March, 2016.

  
\_\_\_\_\_  
Andrew Lambert

Sworn to and subscribed  
before me this 9 day of March, 2016.

  
\_\_\_\_\_  
Notary Public





**CERTIFICATE OF SERVICE**

It is hereby certified that the Reply in Support of the Petition for Leave to Intervene of the Delaware Association of Alternative Energy Providers, Inc. in PSC Docket 15-1734 has been served this 9th day of March, 2016 as indicated below:

**VIA DELAFILE**

Donna Nickerson, Secretary  
Delaware Public Service Commission  
Suite 100, Cannon Building  
861 Silver Lake Blvd.  
Dover, Delaware 19904

**VIA ELECTRONIC MAIL**

Service List (dated 3/1/2016)

A handwritten signature in blue ink, appearing to read 'TAC', is written over a horizontal line.

Todd A. Coomes (#4694)

## Exhibit 1

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF )  
CHESAPEAKE UTILITIES CORPORATION FOR )  
APPROVAL OF NATURAL GAS EXPANSION )  
SERVICE OFFERINGS ) PSC DOCKET NO. 12-292  
(FILED JUNE 25, 2012) )

ORDER No. 8210

FOR ADMISSION AS AN INTERVENOR

AND NOW, this 22<sup>nd</sup> day of August, 2012, pursuant to the authority granted to me in PSC Order No. 8174 dated July 3, 2012, this Hearing Examiner having considered the Petition for Leave to Intervene ("the Petition") filed by the Delaware Association of Alternative Energy Providers, Inc. ("DAAEP") on August 8, 2012;

NOW, THEREFORE,

1. The Petition is granted.
2. In PSC Order No. 8174 (July 3, 2012), the Commission ordered that the deadline for filing Petitions for Intervention was August 10, 2012. (Order, ¶6.)
3. Thus, DAAEP's Petition to Intervene was timely filed.
4. Petitioner Chesapeake Utilities Corporation ("Chesapeake"), a regulated entity, opposes DAAEP's intervention.
5. DAAEP is an association of a number of Chesapeake's competitors. (DAAEP's Reply dated August 17, 2012, ¶1 & fn 1.) In its Reply, DAAEP identified its members, none which are regulated by the Commission. (*Id.*)

6. DAAEP's Petition alleges that "DAAEP's members share a similar interest in the distribution and sale of alternative energy supplies and services to their customers for use in heating and other residential and commercial uses." (DAAEP's Petition, ¶11.) DAAEP's Petition also alleges that "[t]he docket will have a direct impact upon DAAEP's members, and their employees, who may be significantly harmed" if the Commission approves Chesapeake's rate application. (Id.) Chesapeake has an unregulated propane subsidiary, Sharp Propane, which competes with all of DAAEP's members. (DAAEP's Reply, ¶6.) Finally, DAAEP alleges that DAAEP's interests will not be adequately represented by the parties to this proceeding. (Id. at ¶5.)

7. This is not the first time that Chesapeake and DAAEP have sparred as to whether DAAEP should be allowed to intervene in a docket involving Chesapeake's service expansion in Sussex County. On December 4, 2007, after much legal wrangling, the Commission permitted DAAEP to intervene in a Chesapeake service expansion docket.

8. In permitting DAAEP to intervene, the Commission held that "DAAEP's interest in this matter is firmly established by a) the prospect that this case [PSC Docket No. 07-186] will result in the modification of a settlement agreement to which DAAEP is a signatory (approved in PSC Docket No. 97-72T); and b) DAAEP's status as a (former) party to the recently closed PSC Docket No. 05-322, the main issue of which has been transferred to this case." (PSC Order No. 7325 (December 4, 2007), ¶4.)

9. According to DAAEP, it should be permitted to intervene in this docket because " ... Chesapeake's Application seeks to modify the

extension programs agreed to as part of the 2008 Settlement Agreement [in PSC Docket No. 07-186]." (DAAEP's Reply, ¶4.) DAAEP reasons "[i]t is hard to understand why, if DAAEP was a critical party to the 2008 Settlement Agreement, when Chesapeake seeks to make wholesale changes to its expansion tariff and procedures, DAAEP should not be a party." (Id.)

10. DAAEP further alleges that Chesapeake is proposing "changes to allow Chesapeake to evaluate the economics of service installations and extensions to new and existing residential developments based on an Internal Rate of Return Model as opposed to the existing six (6) times net revenue test."<sup>1</sup> (DAAEP's Petition, ¶7.) According to DAAEP, Chesapeake's Application also seeks approval of an alternative rate design and rate structure "in a to-be defined area in southeastern Sussex County" and a new Distribution Expansion Service ("DES") rate for all Chesapeake customers.<sup>2</sup> (Id. at ¶8.) Finally, DAAEP's Petition to Intervene raises the issue of whether Chesapeake has complied with the 2008 Settlement Agreement signed by the parties, the Public Advocate and PSC Staff, by establishing an experimental rate. (Id. at ¶9.)

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<sup>1</sup> Chesapeake's Application states that "the six (6) times revenue test does not provide an accurate measure of the economics of expanding service to existing residential developments." (Chesapeake's Response, ¶10.)

<sup>2</sup> Chesapeake's Application states that the "[r]evenue collected [from the proposed DES rate] would be utilized by Chesapeake to support the necessary resources and administrative requirements to facilitate the large number of anticipated conversions from propane, fuel oil and electricity to natural gas." (Chesapeake's Response, ¶8.) DAAEP argues that this constitutes unlawful "subsidization." (DAAEP Petition, ¶¶6,8) I do not know if that is true at this early stage but I agree with DAAEP's alternative argument that "the issues cannot be determined on the face of Chesapeake's Application." (Id. at ¶6.)

11. For purposes of considering the merits of DAAEP's Petition and Reply, I assume as true the representations made therein. I find that DAAEP has satisfied the intervention requirements of Rule 21 of the Commission's Rules of Practice and Procedure.

12. First, DAAEP's arguments as to why it should be permitted to intervene in this docket are virtually the same reasons why the Commission permitted DAAEP to intervene in PSC Docket No. 07-186, the prior Chesapeake expansion docket.

13. Specifically, in PSC Order No. 7325 (Dec. 4, 2007), the Commission permitted DAAEP to intervene in that service expansion docket holding that "DAAEP's interest in this matter is firmly established by a) the prospect that this case [PSC Docket No. 07-186] will result in the modification of a settlement agreement to which DAAEP is a signatory (approved in PSC Docket No. 97-72T); and b) DAAEP's status as a (former) party to the recently closed PSC Docket No. 05-322, the main issue of which has been transferred to this case." I find that the Commission holding in 2008 applies because DAAEP is a signatory to the 2008 Settlement Agreement and the issues from the prior expansion document will now be addressed in this docket, along with Chesapeake's proposed modifications.

14. More importantly, I find that DAAEP's specific allegations in this docket require the Commission to allow DAAEP to intervene. Again, DAAEP alleges that Chesapeake is: a) proposing to dispense with the revenue test agreed upon by the parties in the prior docket; b) seeks an alternative rate design and rate structure "in a to-be defined area in southeastern Sussex County" and a new Distribution

Expansion Service ("DES") rate for all Chesapeake customers; and c) DAAEP questions whether Chesapeake has complied with the parties' 2008 Settlement Agreement by establishing an experimental rate. (Id. at ¶¶7,8,9.)

15. Although well-crafted, Chesapeake's arguments have not persuaded me to disregard prior Commission intervention rulings. Chesapeake argues that DAAEP is not seeking to protect the "public interest," but rather seeks to protect its own interests. (Chesapeake, ¶1.) However, in the past, the Commission has often permitted competitors to intervene in all types of utility cases.

16. For example, in a 2005 Delmarva natural gas docket, the Commission permitted DAAEP to intervene holding that DAAEP "represents interests [that] are not otherwise specifically represented in this matter and without whose participation the record may not be fully developed" and "granting of the petition would broaden the participation of interested persons in this docket and provide additional information and insights from which the Commission and the public policy of the State would benefit." (PSC Order No. 4014 (May 23, 1995).)

17. In conclusion, I find that DAAEP has satisfied the intervention requirements of Rule 21 of the Commission's Rules of Practice and Procedure, as previously interpreted by the Commission.

18. Finally, I find that, at this time, no conditions should be imposed upon DAAEP's intervention. In prior dockets involving these parties, the Commission did not impose any conditions upon DAAEP's intervention and the dockets were completed.

19. Pursuant to Commission Rule 11, any confidentiality, proprietary or privilege issues, or unwarranted or unduly burdensome discovery issues, should be directed to me if the parties cannot reach an agreement. Although I will not allow this docket to become a "fishing expedition" at Chesapeake's expense, Chesapeake is a regulated entity which must set its rates in accordance with Delaware law. I will handle any such disputes on a case-by-case basis.

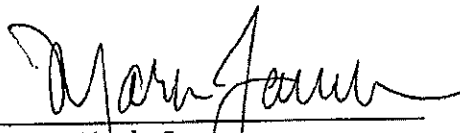
20. As provided in Commission Rule 21(c), this Order is subject to interlocutory appeal to the Commission as prescribed by Rule 28.

Now, therefore, **IT IS ORDERED:**

1. Accordingly, the Petition for Intervention filed by the Delaware Association of Alternative Energy Providers, Inc. ("DAAEP") is **GRANTED**.

2. DAAEP shall be added to the Service List for this Docket, as described in its Petition to Intervene.

BY ORDER OF THE COMMISSION

  
\_\_\_\_\_  
Mark Lawrence  
Hearing Examiner



## Exhibit 2

2 of 98 DOCUMENTS

IN THE MATTER OF THE APPLICATION OF DELMARVA POWER & LIGHT  
COMPANY TO RESTRUCTURE GAS SERVICES (FILED MARCH 1, 1995)

PSC DOCKET NO 95-44, ORDER NO 4014

Delaware Public Service Commission

1995 Del PSC LEXIS 76

May 23, 1995

PANEL: [\*1] Robert J. McMahon, Chairman; Nancy M Norling, Commissioner; Robert W Hartley, Commissioner; Joshua M Twilley, Commissioner; John R McClelland, Commissioner

OPINION: ORDER NO. 4014

AND NOW, to-wit, this 23rd day of May, 1995,

WHEREAS, on March 1, 1995, The Delmarva Power & Light Company filed the above-captioned application with the Commission seeking approval to restructure its gas services by initiating new services, terminating certain existing services, changing its rate design, modifying its Gas Cost Adjustment mechanism, and changing certain provisions of the Rules and Regulations of its Gas Service tariff; and,

WHEREAS, the Commission by Order No 3961, dated March 21, 1995 provided that in order to be timely all petitions for intervention concerning this matter should be filed on or before April 24, 1995; and,

WHEREAS, The Delaware Association of Alternative Energy Providers, an unincorporated association consisting of Burns & McBride Inc., Schagringas Co, Keen Compressed Gas Co, Boulden Inc. and Diamond Fuel Oil on May 19, 1995 petitioned the Commission for leave to intervene in this matter setting forth reasons for the untimely nature of said petition; [\*2] and,

WHEREAS, the Commission on May 23, 1995 heard and considered the presentation and representations of the Delaware Association of Alternative Energy Providers and determined that the Association represents interest are not otherwise specifically represented in this matter and without whose participation the record may not be fully developed; and,

WHEREAS, The Commission has afforded the applicant the opportunity to objection to the granting of such intervention petition and in the absence of any such objection has concluded that the granting of the petition would broaden the participation of interested persons in this docket and provide additional information and insights from which the Commission and the public policy of the State would benefit; now therefore,

IT IS ORDERED:

1 That the intervention petition for leave to intervene filed in the above-captioned matter on May 19, 1995 on behalf of the Delaware Association of alternative Energy Providers, an unincorporated association consisting of Burns & McBride Inc, Schagringas Co, Keen Compressed Gas Co, Boulden Inc and Diamond Fuel Oil is hereby granted and approved effective with the date hereof

2 [\*3] That the Commission reserves the jurisdiction and authority to enter such other or further Orders in this

matter as may be deemed necessary or proper

BY ORDER OF THE COMMISSION:

/s/ Robert J. McMahon, Chairman

/s/ Nancy M. Norling, Commissioner

/s/ Robert W. Hartley, Commissioner

/s/ Joshua M. Twilley, Commissioner

/s/ John R. McClelland, Commissioner

**Legal Topics:**

For related research and practice materials, see the following legal topics:

Energy & Utilities LawUtility CompaniesOwnership & RestructuringEnergy & Utilities LawUtility  
CompaniesRatesGeneral OverviewEnergy & Utilities LawUtility CompaniesService Terminations

## Exhibit 3

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

**IN THE MATTER OF THE APPLICATION OF )  
CHESAPEAKE UTILITIES CORPORATION )  
FOR APPROVAL OF AN ALTERNATIVE )  
RATE DESIGN AND RATE STRUCTURE )  
IN EASTERN SUSSEX COUNTY, )  
DELAWARE (FILED SEPTEMBER 2, 2005) )**

**PSC DKT. \_\_\_\_\_**

Chesapeake Utilities Corporation (hereinafter sometimes called "Chesapeake" or "Applicant") pursuant to 26 Del. C. 201, makes the following application with the Public Service Commission of the State of Delaware ("Commission") for approval of an alternative rate design and rate structure for certain prospective natural gas customers of Applicant in eastern Sussex County, Delaware. In support thereof, Applicant states the following:

1. Applicant is Chesapeake Utilities Corporation, 909 Silver Lake Boulevard, Dover, Delaware 19904. All communications should be addressed to the Applicant at the following address, Attention: Jeffrey R. Tietbohl, Director of Regional Business Planning and Development, 350 South Queen Street, P.O. Box 1769, Dover, Delaware 19904 or at the following e-mail address: [jtietbohl@chpk.com](mailto:jtietbohl@chpk.com). The respective phone number and fax number are 302.734.6742 and 302.734.6011. All communications should also be addressed to Jennifer A. Clausius, Manager of Pricing and Regulation, 350 South Queen Street, P.O. Box 1769, Dover, Delaware 19904 or at the following e-mail address: [jclausius@chpk.com](mailto:jclausius@chpk.com). The respective phone number and fax number are 302.734.6797, extension 6019 and 302.734.6011.

2. Counsel for the Applicant is William A. Denman, Esquire, Parkowski, Guerke & Swayze P.A., 116 West Water Street, P.O. Box 598, Dover, Delaware 19903. Correspondence and other communications concerning this application should be directed to counsel at the foregoing address, or at the following e-mail address: [wdenman@pgslegal.com](mailto:wdenman@pgslegal.com). The respective phone number and fax number are 302.678.3262 and 302.678.9415.
3. Chesapeake is a corporation incorporated under the laws of the State of Delaware. The voting stock of Chesapeake is publicly owned. Shares of common stock, 5,730,913 of which were outstanding as of December 31, 2004, are the only voting securities of Chesapeake.
4. Chesapeake is a Delaware public utility authorized to sell and distribute natural gas in portions of New Castle County and throughout Kent County and Sussex County, Delaware. Chesapeake, through its Delaware Division, serves approximately 30,250 natural gas customers in Delaware pursuant to rates heretofore approved by the Commission. Chesapeake's distribution rates currently in effect were approved by the Commission in PSC Docket 01-307, Phase II on the 19<sup>th</sup> day of November 2002.
5. Chesapeake desires to expand the availability of natural gas service to the residents of eastern Sussex County, Delaware. Sussex County has experienced a tremendous amount of growth, both residential and commercial. While Chesapeake does provide natural gas service to numerous residents and businesses in portions of Sussex County, Delaware, under the Company's current tariff and traditional ratemaking, natural gas service has not been

extended to the potential customers in eastern Sussex County, Delaware. Chesapeake desires to increase the availability of natural gas service on the Delmarva Peninsula through the extension of distribution mains and services to eastern Sussex County. With the change proposed herein, Chesapeake will have the ability to provide such customers with a lower cost, environmentally friendly fuel choice.

6. During the period 1990 through 2000, the population in Sussex County has increased by approximately 38%. Population growth for the period from 2000 to 2010 is now projected to exceed both the 38% historical growth rate in Sussex County and the forecasted population growth rate of 19% contained in the Sussex County Comprehensive Plan Update from January 2003. Such growth continues in traditional resort areas, and is now occurring in close proximity to established municipalities in Sussex County, where little growth had been experienced in recent years. The proportionate number of year round residents in Sussex County is on the rise, with large numbers of individuals moving to the region from other areas.
7. The Governor's Task Force on the State's Energy Policy ("Task Force") recognized the importance of developing a strategy to enhance natural gas availability within Sussex County, Delaware. In September 2003, the Task Force issued its final report to the Governor, which was entitled "Bright Ideas for Delaware's Energy Future." The Executive Summary of the overall final report is included as Attachment No. 1 to this application. On Page 19 of the Executive Summary, Strategy No. 5 relates to enhancing the availability of natural gas with

a specific recommendation that, "The state should evaluate possible incentives for expanding residential and commercial natural gas service." Chesapeake recognizes its responsibility, as the sole provider of natural gas service in lower Delaware, to serve such prospective customers. Chesapeake has both the human and financial resources, including the technical ability, to provide such service on a cost effective basis. By providing natural gas distribution service to eastern Sussex County, Chesapeake would expand energy choices to the consumer in one of the fastest growing parts of the State of Delaware. Expanding natural gas service within Sussex County will provide greater competition among energy service providers, which will be beneficial to the ultimate consumer and should keep prices lower than they would have been in the absence of competition.

8. The Federal Energy Regulatory Commission ("FERC") recently approved Eastern Shore Natural Gas Company's ("Eastern Shore") application to construct additional pipeline facilities, which, among other things, will include an extension of Eastern Shore's pipeline facilities from Milford, Delaware to Milton, Delaware. These new facilities are being constructed at the request of the Delaware Division and are scheduled for completion in the fourth quarter of calendar year 2005. Once these facilities are in place, Chesapeake will have the ability to expand natural gas distribution service in the near term to residents of Milton, Delaware and surrounding areas.
9. Chesapeake's current rate design has enabled Chesapeake to experience significant growth along its current distribution infrastructure and along Eastern



Shore's pipeline. This has benefited both the consumers in the State of Delaware and Chesapeake's investors. However, Chesapeake's current rate design is not likely to enable it to develop the required distribution infrastructure from which to serve the targeted growth zones in eastern Sussex County. Attachment No. 2 is a map designated as Sussex County Comprehensive Plan – Future Land Use (Figure 2) that is taken from the previously mentioned Sussex County Comprehensive Plan Update dated January 2003. This map sets forth the targeted growth zones and development areas in Sussex County. Consistent with the Task Force recommendations, Chesapeake proposes herein to implement a rate design that will enable Chesapeake to provide natural gas as a viable energy option to a broad number of potential customers within these targeted growth zones in eastern Sussex County, Delaware. These rates are intended to provide incentives to these potential customers in terms of energy savings. In order to do so, Chesapeake believes that the adoption of an alternative rate design is both necessary and in the public interest.

10. Attachment No. 3 is a map setting forth Chesapeake's general existing distribution rate area in Sussex County. Chesapeake's residential customers served in this portion of Sussex County will continue to be charged the rates set forth under Chesapeake's Rate Schedule "RS" – Residential Service. Chesapeake proposes establishing a distribution expansion rate area in eastern Sussex County as more particularly demonstrated on Attachment No. 4. Prospective residential natural gas customers located in this distribution

expansion rate area would be charged for natural gas service based upon the alternative rate design and rate structure further described below.

11. Chesapeake's current approved delivery service rates for Rate Schedule "RS" are designed to recover approximately \$372 per year from a typical residential heating customer. A typical residential heating customer located in eastern Sussex County, Delaware is expected to consume on average 46 Mcf of natural gas per year. At Chesapeake's currently approved delivery service rates, a typical residential heating customer in eastern Sussex County would be expected to contribute approximately \$298 per year.
12. Chesapeake believes that it can expand its distribution system infrastructure in eastern Sussex County without increasing existing customers' delivery service rates, if the Commission approves the alternative rate design and rate structure set forth herein. In this application, Chesapeake requests the Commission to authorize Chesapeake to implement an alternative rate design for prospective Delaware Division customers located in the distribution expansion rate area located in eastern Sussex County, as set forth on Attachment No. 4. Chesapeake seeks approval to charge all residential customers within this expansion rate area an overall natural gas price that is equivalent to approximately 95% of the long-term historical average price of retail propane. Such a price would offer said customers an incentive in this expansion rate area in terms of an energy savings that approximates a five percent (5%) savings. Based on the historical cost difference between retail natural gas and propane prices, this alternative rate design and structure would generate approximately

\$430 of delivery service revenue per year from these potential customers, which would amount to approximately \$1.00 per week more than the amount currently effective residential delivery service rates are designed to recover from existing customers, which is \$372 per year. This would provide Chesapeake with the opportunity to earn a reasonable rate of return on the funds necessary to finance the substantial capital improvements and costs associated with the expansion in eastern Sussex County, Delaware. The proposed alternative pricing design and structure will allow Chesapeake's distribution approach mains to be economically extended approximately four (4) times further than Chesapeake's current delivery service rates thereby providing more customers with the option of choosing natural gas service as their energy choice in the targeted growth zones in eastern Sussex County.

13. Attachment No. 5 is Chesapeake's proposed natural gas tariff, marked up, showing the proposed addition of Rate Schedule "RS1" – Residential Service – Eastern Sussex County Expansion Rate Area for those prospective residential customers to be served in this expansion rate area. The rates set forth in Rate Schedule "RS1" would be the maximum rate the Company would be permitted to charge customers in the expansion rate area, and are equivalent to approximately 95% of the long-term historical average price of retail propane. Under the proposed rate schedule, the Company would be permitted to reduce the rates charged to customers under Rate Schedule "RS1", as long as the rates are not reduced below the currently approved rates applicable to residential customers outside the expansion rate area.

14. Attachment No. 6 is a clean version of Chesapeake's proposed natural gas tariff showing the proposed addition of Rate Schedule "RS1" – Residential Service – Eastern Sussex County Expansion Rate Area for those prospective residential customers to be served in this expansion rate area.
15. Applicant also proposes to change the Company's existing margin sharing mechanism to take into consideration the appropriate treatment of margins achieved by the addition of new interruptible customers in the designated distribution expansion rate area in eastern Sussex County, Delaware for which the Company makes capital investments to serve these customers. Currently, Chesapeake is required to include in its margin sharing calculation the margins achieved from all of its interruptible customers. Chesapeake proposes to exclude from the margin sharing mechanism the margins achieved from the addition of new interruptible customers in the proposed distribution expansion rate area in eastern Sussex County, Delaware.
16. Chesapeake's firm base tariff delivery service rates are established during the context of a base rate proceeding when the achieved margins and costs incurred to serve interruptible customers are evaluated and recognized in establishing the firm customers' rates. Currently, the Company shares margins achieved by interruptible customers with the firm customers on an 80%/20% basis, with 80% being credited to the firm customers and 20% being retained by the Company, after an imputed threshold of \$800,000 has been reached. The Company should not be required to share achieved margins from any prospective interruptible customers in the distribution expansion rate area until the next base rate

proceeding in order to ensure that level of achieved margins and incurred costs can be evaluated in the proper context with the margin sharing mechanism when establishing the Company's overall rates. Capital investments for these new interruptible customers should be evaluated on the true economics of the investment and not distorted due to a regulatory sharing mechanism established in a base rate proceeding.

17. Chesapeake's current authorized rate of return on equity is 10.86%. In this application, Chesapeake is not proposing an increase in Chesapeake's return on equity or an increase in Chesapeake's base tariff rates for existing or prospective customers located outside of the proposed distribution expansion rate area in eastern Sussex County, Delaware. However, Chesapeake's expansion into eastern Sussex County will subject the Company and its investors to additional business and financial risk. As an incentive for the Company's investors to assume this increased risk, Chesapeake requests the Commission to enter an order providing that unless Chesapeake's actual rate of return on equity, as reported by Chesapeake on a quarterly basis to the Commission, exceeds 15.00%, Chesapeake will not be required to reduce its currently effective base tariff delivery rates.

18. Chesapeake's current mainline extension policy as contained in the Company's natural gas tariff currently requires a financial contribution in instances where the projected mainline extension does not satisfy or meet the specific requirements necessary to justify the extension. In Chesapeake's case, the residential project must produce a rate of return that is at least equal to the Company's average

allowed rate of return, which is currently 9.27%, or the Company must collect a contribution in order for natural gas service to be extended. Within the context of this alternative rate design proposal, the Company believes that it needs the flexibility and discretion to make certain mainline extensions in this distribution expansion rate area in eastern Sussex County that might not meet the 9.27% return threshold in order to facilitate service to growth zones or development areas in Sussex County.

19. Within the context of this alternative rate design proposal, the Delaware Division, depending on meeting or satisfying the economic requirements of the project, may be in the position of purchasing certain assets from several of the propane service providers in the area, including its own propane subsidiary, for the purposes of converting underground propane distribution systems in Sussex County to natural gas distribution systems. In those instances where it is economically viable for the Delaware Division, the utility is proposing to purchase the assets from these propane service providers at market value and include the cost in the Company's Rate Base.

20. Also within the context of this alternative rate design proposal, the Company is proposing to capitalize on its accounting books and records the cost of converting any existing residential development in eastern Sussex County to natural gas service. There will be certain costs incurred by the utility when converting alternative fuel systems to natural gas systems, especially when it involves converting the appliances within the home, therefore the Company is

proposing to capitalize those conversion costs over the estimated life of the project on its books and records.

21. Attachment No. 7 is a supporting narrative document that specifies and supports in greater detail Chesapeake's specific proposal and the implementation plan with respect to this application. Said narrative is incorporated herein by reference.

22. The Commission has the authority to authorize the Company to implement the alternative rate design structure proposed in this application pursuant to 26 Del.C. §201(d). The approval of Chesapeake's proposed alternative rate design and rate structure for the prospective customers in the distribution expansion rate area in eastern Sussex County, Delaware will not adversely affect the availability, cost or quality of Chesapeake's regulated distribution utility services provided to its existing and/or prospective customers outside of this expansion area.

WHEREFORE, Chesapeake respectfully requests the Commission to:

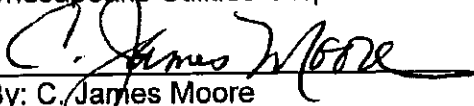
- A. Accept this application for filing, set the form of public notice, and establish a collaborative process with the Commission Staff, the Public Advocate and other interested parties for purposes of considering Chesapeake's application, and setting the matter down for a hearing.
- B. Approve the establishment of an alternative rate design and rate structure for the areas in eastern Sussex County, Delaware located within the designated distribution expansion rate area as depicted on Attachment No. 4 and as described in further detail in Attachment No. 7.

- C. Enter an Order which would provide that Chesapeake not be required to reduce its base tariff delivery rates so long as Chesapeake's rate of return on equity, as reported to the Commission on Chesapeake's Quarterly Rate of Return Reports, does not exceed 15.00%.
- D. Authorize Chesapeake to defer the regulatory costs incurred with respect to this application for future recovery in the Company's next base rate proceeding.
- E. Authorize the Company to capitalize the cost it incurs for converting customer equipment to utilize natural gas and include such cost in the Company's Rate Base.
- F. Authorize the Company, at its sole discretion, to extend its mainlines in the Expansion Rate Area if the forecasted return on equity exceeds 9.00%.
- G. Authorize the Company to capitalize the acquisition of facilities purchased from propane service providers and include the purchase price in the Company's Rate Base.
- H. Authorize Chesapeake to implement on a temporary basis and subject to refund, the alternative rate design and rate structure described herein on November 1, 2005.



Respectfully Submitted,

Chesapeake Utilities Corporation



By: C. James Moore  
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Distribution



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